

Remarks

The present application was filed October 16, 2001 with original claims 1-37. The Office Action (Paper No. 5) mailed December 16, 2002 allowed claims 26-36 and rejected claims 1-25 and 37. In response, Applicant amended claims 2, 12, 13, 16, 20, 25, 27, 32, and 37, and cancelled claims 1, 3, 8, 9, 10, 17, and 21. The amendment to claims 27 and 32 added the term “substantially” to the language “in the same direction” in order to more particularly point out and distinctly claim the subject matter of the present invention; these amendments were not narrowing in view of a cited art rejection because these claims were already allowed at the time of the amendments. The amendments to claim 37 solely more particularly pointed out and distinctly claimed the subject matter of the invention; these amendments were not narrowing in view of a rejection over a cited reference because the amendments only make explicit what was before implicit.

The Office Action (Paper No. 7) allowed claims 26-37 and rejected claims 2, 4-7, 11-16, 18-20, and 22-25. In response, Applicant amended claims 16, 27, and 32 and filed new claim 38. The amendments to claims 27 and 32 changed the term “clip” to “wall assembly” in accordance with the independent claims from which they depend; these amendments were not narrowing in view of a cited art rejection because these claims were already allowed at the time of the amendments.

The Advisory Action (Paper No. 9) mailed August 28, 2003 allowed claims 26-37 and rejected claims 2, 4-7, 11-16, 18-20, 22-25, and 38. In response, Applicant filed an RCE amending claims 2, 4, 6, 7, 12, 16, 18-20, 22, 23, 25, and 38 and filed new claims 39-45. The amendments to claim 38 solely more particularly pointed out and distinctly claimed the subject matter of the invention; these amendments were not narrowing in view of a cited art rejection because claim 38 was never rejected over a cited reference.

The Office Action (Paper No. 11) mailed January 28, 2004 allowed claims 26-45 and rejected claims 2, 4-7, 11-16, 18-20, and 22-25. In response, Applicant herein has cancelled claims 2, 4-7, 11-16, 18-20 and 22-25 without prejudice. These amendments are not narrowing of the claim scope of the present invention; particularly, these amendments are not narrowing in view of a rejection over a cited reference because the rejection is erroneous as a matter of law.

Rejection of Claims Under 35 U.S.C. §102(b)

The Office Action rejected claims 2, 4-7, 11, 12, 16, 18-20, and 22-25 as being anticipated by U.S. Patent No. 5,519,976 issued to Gee ("Gee '976"). This rejection is obviated by the cancellation of these claims. The Applicant respectfully submits, however, that the cancellation of these claims is not a narrowing amendment to overcome a rejection over a cited reference. Rather, the rejection is erroneous as a matter of law because Gee '976 is inherently incapable of performing the intended use of the present invention as claimed in independent claims 2 and 16, and the dependent claims depending therefrom. The cancellation of these claims is solely for the purpose of facilitating prosecution on the merits permitting the allowed claims to pass to issuance. Withdrawal of the present rejection in view of the cancellation of these claims without prejudice is respectfully requested.

Rejection of Claims Under 35 U.S.C. §103

The Office Action rejected claims 13-15 as being obvious over Gee '976. This rejection is obviated by the cancellation of these claims. The Applicant submits, however, that the cancellation of these claims is not a narrowing amendment to overcome a rejection over a cited reference. Rather, the rejection is erroneous as a matter of law, at

least because the independent claims from which these claims depend are allowable, for the reasons above. Withdrawal of the present rejection in view of the cancellation of these claims without prejudice is respectfully requested.

Allowed Claims

The Applicant gratefully acknowledges the allowed subject matter in claims 26-45.

Summary of Telephone Interview

The Applicant gratefully acknowledges the Examiner granting the request for telephone interview pursuant to Applicant's request in the RCE. Submitted herewith is the requisite substantive summary of that interview in accordance with MPEP 713.04.

Conclusion

This is a complete response to the Office Action mailed January 28, 2004. The amendments place the application in condition to allow all of the pending claims to pass to issuance. The Examiner is invited to contact the below signed Attorney should any questions arise concerning this response.

Respectfully submitted,

By: 

Mitchell K. McCarthy, Registration No. 38,794
Randall K. McCarthy, Registration No. 39,297
Bill D. McCarthy, Registration No. 26,772
Daniel P. Dooley, Registration No. 46,369
Fellers, Snider, Blankenship, Bailey and Tippens
100 N. Broadway, Suite 1700
Oklahoma City, Oklahoma 73102
Telephone: (405) 232-0621
Facsimile: (405) 232-9659

**EXPRESS MAIL RECEIPT NO. EV096523386US
DEPOSITED ON MARCH 29, 2004**

**PATENT
DKT. MKM1**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: **Wheeler, et al.**
Application No.: **09/978,477**
Filed: **October 16, 2001**
For: **DEFLECTION CLIP**

Group Art Unit: **3635**
Examiner: **S. Varner**

**Mail Stop AF
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450**

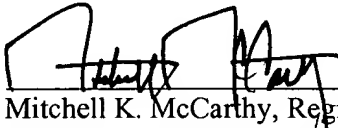
**SUMMARY OF TELEPHONE INTERVIEW BETWEEN APPLICANT'S
ATTORNEY AND EXAMINER VARNER REQUESTED IN THE RCE**

Sir:

Applicant's attorney McCarthy was granted a telephone interview with Examiner Varner pursuant to the request filed in the RCE. Agreement was reached that claim 38 is allowable. No agreement was reached regarding the allowability of claims 2 and 16, and the claims depending therefrom.

This is a complete substantive summary of the telephone interview in this case.

Respectfully submitted,

By: 

Mitchell K. McCarthy, Registration No. 38,794
Randall K. McCarthy, Registration No. 39,297
Bill D. McCarthy, Registration No. 26,772
Daniel P. Dooley, Registration No. 46,369
Fellers, Snider, Blankenship, Bailey and Tippens
100 N. Broadway, Suite 1700
Oklahoma City, Oklahoma 73102
Telephone: (405) 232-0621
Facsimile: (405) 232-9659